



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Design Contempo, Inc.

**File:** B-252589.2

**Date:** August 11, 1993

Dean M. Dilley, Esq., and Michael J. Schaengold, Esq., Patton, Boggs & Blow, for the protester. Allie B. Latimer, Esq., and Christy L. Gherlein, Esq., General Services Administration, for the agency. Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Preaward samples were properly rejected as technically unacceptable where record shows samples were evaluated in accordance with the solicitation's evaluation factors and after the submission of three samples, protester's samples still contained uncorrected deficiencies.
2. Protest that agency treated offerors unequally by allowing awardee to cure deficiencies in its preaward sample through the use of a certification letter while protester's samples were rejected as technically unacceptable is denied where the record shows that agency evaluated samples in accordance with the solicitation and concluded that awardee's deficiencies were slight problems with the finish and workmanship, whereas protester's samples had design problems.

### DECISION

Design Contempo, Inc. (DCI) protests the rejection of its proposal as technically unacceptable and the award of a contract to American of Martinsville (AM) under request for proposals (RFP) No. 3FNH-92-D401-N, issued by the General Services Administration (GSA) for a quantity of household and quarters furniture. DCI contends that the agency misevaluated its proposal and improperly required its bid samples to comply with unstated evaluation factors. DCI also argues that the agency did not treat all offerors equally in its evaluation of preaward bid samples.

We deny the protest.

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The solicitation, issued June 1, 1992, contemplated the award of a definite quantity, firm, fixed-price contract for platform storage beds, headboards, wardrobes, desks, dressers, mirrors, chests, nightstands, entertainment units, and drop lid desk armoires. The solicitation contained a purchase description for the items covered and required offerors to submit two preaward samples for evaluation. Offerors were required to submit a preaward sample for the drop lid desk armoires (the wall unit) and the desk side chair (the side chair) as representative preaward samples. The solicitation stated that the samples would be evaluated to determine compliance with the following subjective characteristics:

"Workmanship-includes all methods of machining, construction, veneering, joinery, gluing, assembly, drawer fit and action, application of plastic laminate and tailoring and padding of seat and back cushions.

"Finish-includes checking the finished wood surfaces to insure they are free of any major or objectionable irregularities or for a smooth, semi-closed pore appearance for all exposed wood components. (We will not inspect for color match during bid sample inspection.)

"Design-includes checking to insure the furniture is compatible with design requirements in the purchase description."

The solicitation further provided that failure of the samples to conform to the required characteristics would constitute a deficiency in the proposal and would be resolved through discussions. All deficiencies were to be corrected by the time and date set for receipt of best and final offers (BAFO), or as otherwise established by the contracting officer. The solicitation also provided that the failure to correct any deficiency would require rejection of the offer. Award was to be made in the aggregate for all items so that rejection of either sample as unacceptable rendered the entire offer unacceptable.

Six offers were received. DCI's samples were found to have 23 deficiencies in the wall unit and four deficiencies in the side chair. The contracting officer concluded that the deficiencies reflected serious problems with design and workmanship and requested DCI to correct the deficiencies through the submission of new samples. Four other offerors were also provided the opportunity to submit new samples to correct deficiencies.

AM's preaward samples were determined to have four deficiencies in the wall unit and three deficiencies in the side chair. The contracting officer determined that AM's samples were designed properly and that the deficiencies represented workmanship and finish problems that could be corrected by the submission of an acceptable certification letter. AM subsequently submitted a letter in which it certified that all deficiencies would be corrected in the manufacturing and quality inspection process. The letter was determined to be acceptable.

DCI and two other offerors submitted new samples. The evaluation panel found five deficiencies in the wall unit and two deficiencies in the side chair. Deficiencies remained in the other two offerors' samples as well. The agency requested these offerors to submit a third and final set of samples and requested the submission of BAFOs. The agency advised that all of the deficiencies in the preaward samples had to be corrected by the time set for receipt of BAFOs. The BAFO request letter listed the deficiencies noted in the second samples and stated that this was the offerors' last chance to correct deficiencies. Offerors were also cautioned that the submission of samples with any deficiencies in workmanship, finish or design would result in the rejection of the offer without further consideration. Since AM's samples had already been determined to be acceptable, AM was only requested to submit a BAFO.

DCI's final samples were found to have two deficiencies in the wall unit and two deficiencies in the side chair. The wall unit had the following deficiencies:

- "1. The drop lid has loose action, which causes it to be difficult to keep closed.
- "2. There are visible lacquer runs on the right end in the top right corner."

The side chair had the following deficiencies:

- "1. On page 16, paragraph (3.2.4.D), reference is made to the necessary comfort of the desk chair. The chair submitted is very uncomfortable due to the shallowness of the seat cushion. For this reason, the chair has been found to be unacceptable by the review team.
- "2. There are light leaks in the back cushion of the chair. This has not been corrected from the previous sample."

These samples were determined to be technically unacceptable due to the design, workmanship and finish contained in the pieces. Award was made on February 24, 1993, to AM, the lowest priced technically acceptable offeror. DCI received a debriefing on March 8 and filed its protest with our Office on the same day. The agency was not required to stay performance of the contract because the protest was filed more than 10 calendar days after award. 31 U.S.C. § 3554(d)(1) (1988).

The protester basically alleges that its samples were misevaluated. Our Office will review an allegedly improper technical evaluation of such samples to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Warrensville File & Knife, Inc., B-241805, Mar. 1, 1991, 91-1 CPD ¶ 236.

Initially, DCI argues that GSA misapplied the solicitation's preaward sample clause and erroneously required DCI's samples to comply with all the requirements of the purchase description. As stated above, the RFP provided that preaward samples would be evaluated for workmanship, finish, and design. Under design, the evaluators were to check to ensure that the furniture was compatible with the purchase description design requirements. Thus, the RFP did state that the evaluation would include consideration of the sample's compliance with the purchase description design requirements.

With respect to the wall unit, the purchase description provided that "all operating parts shall be well fitted, properly aligned, and operated smoothly and quietly without loose or sloppy action." Based on DCI's last sample, the agency found that the drop lid had an extremely loose action which the evaluators determined to be an uncorrected "drawer fit and action" deficiency under the workmanship evaluation criteria. DCI does not deny its sample wall unit had this problem. The protester instead argues that this is an easily correctable deficiency. However, offerors were specifically required to correct all deficiencies by the time specified for receipt of BAFOs and were advised that the failure to do so would result in rejection. From the record, it appears that the specific deficiency identified in the last sample by the agency evaluators was a problem in each wall unit sample DCI submitted. The deficiency remained at the time of BAFO. The agency states that the loose action of the drop lid could create a safety problem since the lid could fall down when not in use. We conclude that the agency reasonably decided this deficiency was material because it posed a safety problem and that it provided a reasonable basis for rejection of the DCI proposal.

DCI alleges it was not advised of the drop lid problem during discussions. The record shows, however, that DCI was given several opportunities to correct the drop lid problem. By letter dated October 5, 1992, regarding the first sample, GSA stated that: "[T]he drop lid supports do not completely come down to their intended position. The door is supported by the waist rail instead of the supports." After a review of DCI's second sample, by letter dated November 27, 1992, GSA advised DCI that the "drop lid door is very difficult to open." We think this was sufficient to place DCI on notice of the problem.

With respect to the side chair, the evaluators found that DCI's sample was very uncomfortable due to the shallowness of the seat cushion and for this reason the chair was determined to be technically unacceptable. DCI contends that the agency improperly rejected its chair because the sample clause did not refer to chair comfort. The purchase description specifically required the chair to have a "comfortable back cushion and seat cushion which does not bottom out," and further provided that chair comfort would be determined by the bid sample review team and that a chair found to have an unacceptable degree of comfort would be rejected. Thus, the agency's evaluation of the chair's comfort was consistent with the RFP.

The protester also argues that if a deficiency does exist, it is easily correctable and is not indicative of any material failure of workmanship, finish or design sufficient to justify rejection of DCI's offer. GSA reports that DCI's attempt to correct a deficiency in seat depth without adjusting the padding on the back of the chair resulted in an uncomfortable chair. While the protester does not agree that its chair is uncomfortable, it does not rebut the agency's specific evaluation finding or the agency's explanation of why the chair was uncomfortable. On this record, we have no basis to conclude that the agency's evaluation was unreasonable or that the chair sample's lack of comfort was not sufficiently material to justify rejection of the sample.<sup>1</sup>

Next, DCI contends that GSA failed to treat offerors equally when it allowed AM to correct the deficiencies in its preaward samples by providing a certification letter, while requiring all other offerors to submit new samples. Further, DCI maintains that AM's deficiency list was similar

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<sup>1</sup>In any event, since the agency properly viewed the wall unit as unacceptable, and since award was to be made in the aggregate for all items, rejection of DCI's proposal was not dependent on the acceptability of the chair sample.

to the deficiency list which caused GSA to reject DCI's final sample.

Procuring agencies are required to treat all offerors equally. See, e.g., ITT Elec. Technology Div., B-242289, Apr. 18, 1991, 91-1 CPD ¶ 383. The RFP provided that all deficiencies must be corrected by the time and date specified for the receipt of BAFOs, or as otherwise established by the contracting officer. The record shows that the contracting officer viewed AM's deficiencies as correctable after award because they were not reflective of fundamental design problems; he viewed DCI's deficiencies as more substantial such that correction by the time of BAFO submission was required.

The deficiencies found in AM's preaward samples were as follows:

"CHAIR

1. The top of the left leg post is gouged.
2. Facing the chair, the right stretcher has a crack where it meets the front leg post.
3. There are staples protruding from the left and the back side posts, and there are staple holes on the underside of all four rails.

The cross stretcher is loose to the touch.

"WALL UNIT

1. The amount of hot melt glue is not sufficient on all drawers. This should be corrected in accordance with part 3.2.2.5(c) of the purchase description.
2. The bottom of the drawers are loose and leaking light.<sup>2</sup> This does not conform to part 3.2.2.5(e) of the purchase description.
3. There is a brown discoloration build up on both sides of the piano hinge plate.
4. The front of the middle drawer has a stain run on the right side."

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<sup>2</sup>In its October 20 certification letter, AM stated that all drawer bottoms would be 100 percent perimeter sealed with hot melt glue to avoid any looseness or light leaks.

These deficiencies obviously do not reflect any meaningful design problems. For example, AM's chair had a gouge, a crack, and staples protruding from the posts. AM's wall unit had a problem with the glue, had a brown discoloration, a stain run, and the bottom of the drawers were loose and leaking light. In our view, the agency could reasonably conclude that these were one-time problems unique to the samples furnished, not defects fundamental to the design or production of the furniture.

In contrast, DCI's deficiencies concerning the operation of the wall unit drop lid feature and chair comfort can be reasonably viewed as design deficiencies impacting on the acceptability of the product. Certainly, they involve more than a simple crack or stain, and the protester's failure to correct these deficiencies after two opportunities to do so supports the contracting officer's conclusion that DCI's samples reflected design deficiencies.

Given the meaningful difference in the nature of the deficiencies in the samples of the two offerors, we do not find unequal treatment. The contracting officer properly allowed AM, but not DCI, to submit a certification letter rather than to correct the noted deficiencies by the time for BAFO submission.

The protest is denied.

  
for James F. Hinchman  
General Counsel